THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WOON F. LEUNG
and ASCHER H. SHAPIRO

Appeal No. 96-0978
Application 08/110,324[1]

HEARD: AUGUST 7, 1997

Before CALVERT, MEISTER and ABRAMS, ***Administrative Patent Judges***.

MEISTER, ***Administrative Patent Judge***.

DECISION ON APPEAL

Woon F. Leung and Ascher H. Shapiro (appellants) appeal from the final rejection of claims 1 and 2.[2] Claims 3-21, the only other claims present in the application, stand withdrawn from

[1] Application for patent filed August 20, 1993. According to applicants, this application is a continuation of Application 07/815,432 filed December 31, 1991.

[2] Claim 2 has been amended subsequent to final rejection.

further consideration by the examiner under the provisions of 37 CFR § 1.142(b) as being directed to a nonelected species. We affirm-in-part.

The appellants' invention pertains to a feed accelerator system for use in a centrifuge. Independent claim 1 is further illustrative of the appealed subject matter and reads as follows:

1. A feed accelerator system for use in a centrifuge, the system comprising

a conveyor hub rotatably mounted substantially concentrically within a rotating bowl, the hub including an inside surface and an outside surface,

at least one helical blade mounted to the outside surface of the conveyor hub, the blade having a plurality of turns,

an accelerator secured within the conveyor and including a distributor having a distributor surface,

a feed pipe mounted substantially concentrically within the conveyor hub for delivering a feed slurry to the centrifuge, the feed pipe including a discharge opening, positioned proximate to the distributor surface,

at least one feed slurry passageway between the inside surface of conveyor hub and the outside surface of the conveyor hub, and

a vane apparatus associated with the passageway and disposed between two adjacent turns of the helical blade.

The references relied on by the examiner are:

Lavanchy et al. (Lavanchy)	3,368,747	Feb. 13, 1968
Kulker (Germany Application)[3]	3,723,864	Jan. 26, 1989

Claim 2 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the appellants regard as the invention.

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Lavanchy.

Claim 2 stands rejected under 35 U.S.C. § 103 as being unpatentable over Lavanchy in view of Kulker.

The examiner's rejections are explained on pages 3-5 of the answer. Rather than reiterate the arguments of the appellants and the examiner in support of their respective positions, reference is made to pages 4-10 of the substitute brief and pages 5-9 of the answer for the details thereof.

OPINION

We have carefully reviewed the appellants' invention as described in the specification, the appealed claims, the prior

[3] Translation attached.

art applied by the examiner and the respective positions advanced by the appellants in the substitute brief and by the examiner in the answer. As a consequence of this review, we will sustain the rejection of claim 1 under 35 U.S.C. § 102(b). We will not, however, sustain the rejections of claim 2 under 35 U.S.C. § 112, second paragraph, and 35 U.S.C. § 103.

Considering first the rejection of claim 2 under the second paragraph of § 112, the examiner is of the opinion that this claim is indefinite because "the trailing edge" lacks an antecedent basis. We will not support the examiner's position.

Initially, we note that the purpose of the second paragraph of Section 112 is to basically insure, with a **reasonable** degree of particularity, an **adequate** notification of the metes and bounds of what is being claimed. ***See In re Hammack***, 427 F.2d 1378, 1382, 166 USPQ 204, 208 (CCPA 1970). When viewed in light of this authority, we cannot agree with the examiner that the metes and bounds of claim 2 cannot be determined because of the list of alleged deficiencies noted by the examiner. A degree of **reasonableness** is necessary. As the court stated in ***In re Moore***, 439 F.2d 1232, 1235, 169 USPQ 236, 238 (CCPA 1971), the

determination of whether the claims of an application satisfy the requirements of the second paragraph of Section 112 is

> merely to determine whether the claims do, in fact, set out and circumscribe a particular area with a **reasonable** degree of precision and particularity. It is here where the definiteness of language employed must be analyzed -- not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art. [Emphasis ours; footnote omitted.]

Here, we do not believe that it can seriously be contended that, consistent with the appellants' specification, one of ordinary skill in this art would not understand that the feed slurry passageway has both a leading edge and a trailing edge in the direction of rotation of the conveyor hub. Accordingly, we will not sustain the rejection of claim 2 under 35 U.S.C. § 112, second paragraph.

Turning to the rejection of claim 1 under 35 U.S.C. § 102(b) as being clearly anticipated by Lavanchy, we initially note that the terminology in a pending application's claims is to be given its broadest reasonable interpretation (***In re Zletz***, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)) and limitations from a pending application's specification will not be read into the claims (***Sjolund v. Musland***, 847 F.2d 1573, 1581-82, 6 USPQ2d

2020, 2027 (Fed. Cir. 1988)). Moreover, anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or the recognition of inherent properties that may be possessed by the prior art reference. ***Verdegaal Brothers Inc. v. Union Oil Co. of California***, 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir. 1987). A prior art reference anticipates the subject matter of a claim when that reference discloses each and every element set forth in the claim (***In re Paulsen***, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994) and ***In re Spada***, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990)); however, the law of anticipation does not require that the reference teach what the appellants are claiming, but only that the claims on appeal "read on" something disclosed in the reference (***Kalman v. Kimberly-Clark Corp.***, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), ***cert. denied***, 465 U.S. 1026 (1984)).

Here, it is the appellants' position that:

> Lavanchy discloses and teaches the use of a "**tubular** feed nozzle", identified by Lavanchy as element 30, extending radially outward from the conveyor hub and having an opening below the surface of the pool formed in the rotating bowl. Lavanchy, Col. 2, lines 62-65. As shown in Figs. 1, 2 and 3, Lavanchy's nozzle is an **enclosed** tube. In contrast, a vane is defined as "one of several usually relatively

> thin, rigid, **flat**, or sometimes curved surfaces radially mounted along an axis that is turned by or used to turn a fluid." The American Heritage Dictionary p. 1336 (2d. ed. 1985) (emphasis added). Accordingly, by definition, a vane is not an enclosed tube. [Substitute brief, page 6.]

However, even if we were to agree with the appellants that the tubular element 30 of Lavanchy cannot be considered to be a "vane," claim 1 only broadly sets forth "a vane apparatus **associated** with the passageway . . ." (emphasis ours). Thus, the baffle 38 of Lavanchy can broadly be considered to be a "vane" (even by the appellants' definition) that is "associated" with Lavanchy's passageway (see Fig. 3). This being the case, we will sustain the rejection of claim 1 under 35 U.S.C. § 102(b) as being clearly anticipated by Lavanchy.

Considering last the rejection of claim 2 under 35 U.S.C. § 103 as being unpatentable over Lavanchy in view of Kulker, the examiner is of the opinion that the member 30 of Lavanchy is a baffle which is illustrated in Fig. 3 as extending radially inwardly of the conveyor hub. Additionally, the answer states that:

> It can be seen from Figure 2 of Lavanchy that the exterior of the surface in question, 30, is facing outwardly from the paper and the interior faces into the paper. The opening 40 is opposite the interior surface but the surface faces orthogonal to the direction of rotation. Kulker merely provides the

> obviousness to modify Lavanchy's surface to face in the direction of rotation. [Page 8.]

We do not agree with the examiner's position. Claim 2 expressly requires that the baffle has at least one surface extending radially inward and "which is proximate to the trailing edge of the feed slurry passageway but remaining **open** in the direction of rotation" (emphasis ours). As the examiner apparently recognizes, the member 30 of Lavanchy is not open in the direction of rotation. In an attempt to overcome this deficiency the examiner resorts to the teachings of Kulker. We must point out, however, that while Kulker discloses open guide channels 10, these channels extend **outwardly** of the hub 6. The inlets 9 of Kulker do extend radially inwardly; however, these inlets are closed passageways and thus do not form a baffle which is open in the direction of rotation.

Since we find nothing in the combined disclosures of Lavanchy and Kulker which fairly suggests a radially inwardly extending baffle which is proximate the trailing edge of the feed slurry passageway and which is open in the direction of rotation, we will not sustain the rejection of claim 2 under 35 U.S.C. § 103 based on the combined teachings of these two references.

In summary:

The rejection of claim 1 under 35 U.S.C. § 102(b) is affirmed.

The rejections of claim 2 under 35 U.S.C. § § 103 and 112 are reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

IAN A. CALVERT Administrative Patent Judge	)
JAMES M. MEISTER Administrative Patent Judge	) BOARD OF PATENT APPEALS AND INTERFERENCES
NEAL E. ABRAMS Administrative Patent Judge	)

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